
DIGEST

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HB 475 Engrossed

2023 Regular Session

Magee

Abstract: Provides relative to the admissibility of evidence of a defendant's creative or artistic expression in criminal actions.

Proposed law provides that evidence of a defendant's creative or artistic expression, whether original or derivative, is not admissible in criminal actions except as provided by proposed law.

Proposed law provides that a court may admit evidence of a defendant's creative or artistic expression if the district attorney proves by clear and convincing evidence all of the following:

- (1) If the expression is original, that the defendant intended a literal meaning.
- (2) If the expression is derivative, that the defendant intended to adopt a literal meaning.
- (3) The expression refers to the specific facts of the crime alleged.
- (4) The expression is relevant to a disputed issue of fact.
- (5) The expression has distinct probative value not provided by any other admissible evidence.

Proposed law provides that a court shall make a ruling on the record and include findings of fact essential to its ruling.

Proposed law provides if the court admits any evidence pursuant to proposed law that it shall ensure that the expression is redacted in a manner to limit the evidence presented to the jury and provide appropriate limiting instructions to the jury.

Proposed law provides that proposed law shall not apply to civil actions.

Proposed law defines "creative or artistic expression".

Present law (C.E. Art. 404(B)(1)) provides that, unless there is an exception, evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith, but may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident.

Present law further provides that evidence of other crimes, wrongs, or acts may be admissible for

other purposes if, upon request by the accused, the prosecution in a criminal case provides reasonable notice in advance of trial of the nature of any such evidence that it intends to introduce at trial for such purposes, or when the evidence relates to conduct that constitutes an integral part of the act or transaction that is the subject of the present proceeding.

Proposed law retains present law.

Proposed law provides that, unless there is an exception, creative or artistic expression is not admissible in a criminal case to prove the character of a person in order to show that he acted in conformity therewith, provided that the accused provides reasonable notice to the prosecution in advance of trial asserting that the evidence is creative or artistic expression.

Proposed law further provides that evidence of creative or artistic expression may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case provides reasonable notice in advance of trial of the nature of any such evidence that it intends to introduce at trial for such purposes, or when the evidence relates to conduct that constitutes an integral part of the act or transaction that is the subject of the present proceeding.

Proposed law provides that proposed law shall not be construed to limit the admission or consideration of evidence under any other rule.

Proposed law shall be known and cited as the "Restoring Artistic Protection Act of 2023".

(Amends C.E. Art. 404(B)(1); Adds C.Cr.P. Art. 718.2)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill:

1. Make technical changes.
2. Define "creative or artistic expression" within the La. Code of Evidence and establish when it is admissible as evidence in criminal proceedings.
3. Provide that proposed law relative to the admissibility of creative or artistic expression shall not be construed to limit the admission or consideration of evidence under any other rule.